

A Balakrishnan a/l Kaliannan v Ritz Garden Hotel (Cameron Highlands) Sdn Bhd

B COURT OF APPEAL (PUTRAJAYA) — CIVIL SUIT NO C-02-774 OF 2007
AZHAR MA'AH JCA
24 DECEMBER 2010

C *Civil Procedure — Interest — Judgement sum — Interest disallowed — Whether interest ought to be awarded on judgment sum — Whether discretion exercised judiciously — Rules of the High Court 1980 O 42 r 12*

D The plaintiff, the registered proprietor of a piece of land situated in Cameron Highlands, had by a sale and purchase agreement ('SPA') dated 12 December 1991 agreed to sell the land to the defendant at a purchase price of RM1m. On the factual matrix of the evidence before the court it was apparent that the parties had also embarked upon a joint-venture agreement to develop the plaintiff's land into a hotel cum condominium upon the terms and conditions as agreed between the parties in the SPA. However, when the defendant without fulfilling all the conditions agreed upon and proceeded to have the land transferred and registered in its name, the plaintiff lodged a private caveat. The plaintiff also commenced an action against the defendant for the breach of the agreement. In its defence the defendant claimed that there was an oral agreement between the parties to vary the terms and conditions of the joint venture agreement. The trial judge rejected the defendant's claim that there was such an oral agreement and ordered the defendant to pay the plaintiff the remainder of the purchase price of RM750,000. When making this order, the trial judge had disallowed interest. This was the plaintiff's appeal on the issue of

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G interest on the RM750,000 that was ordered to be paid to the plaintiff. In his appeal the plaintiff submitted that the trial judge ought to have awarded interest on the judgment sum pursuant to O 42 r 12 of the Rules of the High Court 1980. The defendant submitted that the plaintiff was not entitled to interest because he had lodged a private caveat on the land, whilst the

H defendant had been ready able and willing to pay on condition that the plaintiff removed the caveat.

Held, allowing the appeal with no order as to costs:

I (1) Perusal of the appeal record showed that the plaintiff had only lodged the private caveat after the defendant had transferred the land to its name. The transfer of the land to the defendant was done in breach of the agreement between the parties and was therefore unlawful. In these circumstances the plaintiff as the aggrieved original owner of the land was justified in lodging the private caveat on the land (see para 9).

- (2) Although interest is very much a discretionary matter, that discretion had to be exercised judiciously. In the circumstances of the instant case there was no justification for the plaintiff to be deprived of the interest, which he was entitled to under the law (see para 9).

[Bahasa Malaysia summary]

Plaintif, pemilik berdaftar sebidang tanah yang terletak di Cameron Highlands, telah, melalui satu perjanjian jual beli ('PJB') bertarikh 12 Disember 1991, bersetuju menjual tanah tersebut kepada defendan dengan harga belian RM1 juta. Berdasarkan atas fakta keterangan yang dikemukakan di mahkamah, adalah jelas bahawa pihak-pihak telah memulakan perjanjian usahasama untuk membangunkan tanah plaintiff menjadi hotel merangkap kondominium seperti yang dipersetujui oleh pihak-pihak dalam PJB. Walau bagaimanapun, apabila defendan gagal memenuhi syarat-syarat dan meneruskan untuk memindah milik tanah tersebut dan mendaftar di bawah namanya, plaintiff memasukkan kaveat persendirian. Plaintiff juga telah memulakan tindakan terhadap defendan bagi pelanggaran perjanjian. Dalam pembelaannya, defendan mendakwa bahawa terdapat perjanjian lisan antara pihak-pihak untuk mengubah terma dan syarat perjanjian usahasama. Hakim bicara menolak tuntutan defendan bahawa terdapat perjanjian lisan dan memerintahkan defendan untuk membayar kepada plaintiff baki harga belian berjumlah RM750,000. Apabila mengeluarkan perintah ini, hakim bicara telah tidak membenarkan faedah. Ini adalah rayuan plaintiff untuk isu faedah bagi RM750,000 yang diperintahkan untuk dibayar kepada plaintiff. Dalam rayuannya, plaintiff menghujahkan bahawa hakim bicara seharusnya mengawardkan faedah bagi jumlah penghakiman menurut A 42 k 12 Kaedah-Kaedah Mahkamah Tinggi 1980. Defendan menghujahkan bahawa plaintiff tidak berhak ke atas faedah kerana dia telah memasukkan kaveat persendirian ke atas tanah tersebut sedangkan defendan telah sedia mampu dan sanggup membayar dengan syarat plaintiff menyingkirkan kaveat.

Diputuskan, membenarkan rayuan tanpa perintah mengenai kos:

- (1) Penelitian terhadap rekod rayuan menunjukkan bahawa plaintiff telah memasukkan kaveat persendirian hanya selepas defendan memindah milik tanah tersebut di bawah namanya. Pindah milik tanah tersebut kepada defendan telah dilakukan dengan pelanggaran perjanjian antara pihak-pihak dan dengan itu menyalahi undang-undang. Di dalam keadaan-keadaan ini, plaintiff sebagai pemilik asal yang terkilan berjustifikasi untuk memasukkan kaveat persendirian ke atas tanah (lihat perenggan 9).
- (2) Walaupun faedah adalah isu budi bicara, budi bicara begitu mestilah dilaksanakan secara bijaksana. Di dalam keadaan-keadaan kes ini, tiada justifikasi bagi plaintiff untuk dinafikan faedah-faedah yang mana dia berhak di bawah undang-undang (lihat perenggan 9).]

A Notes

For cases on judgment sum, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4007–4011.

Cases referred to

- B** *Yap Yew Cheong & Anor v Dirga Niaga (Selangor) Sdn Bhd* [2005] 7 MLJ 660, HC (refd)

Legislation referred to

Civil Law Act 1956 s 11

- C** Rules of the High Court 1980 O 42 r 12

Sulaiman Abdullah (R Kengadharan with him) (R Kengadharan & Co) for the appellant.

Eric Anthony (Eric & Co) for the respondent.

D Azhar Ma'ah JCA:

E [1] This is an appeal against the decision of the learned High Court judge dated 19 July 2007 wherein an order was made against the plaintiff as well as the defendant in the following terms:

Having regard to the aforementioned matters I therefore find that the plaintiff has, on a balance of probabilities failed to establish a case for their claim as averred in the statement of claim. However, with the land already transferred, the defendant having equally failed to account for the alleged settlement of a varied price is hereby required to settle the remainder of the amount of purchase price as full settlement of the purchase price. I, therefore, hold as follows:

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- (1) The land remains registered in the name of Ritz Garden Hotel (Cameron Highlands) Sdn Bhd;
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- (2) The defendant do pay the plaintiff the remainder of the purchase price that is RM750,000.00 within a reasonable time after and upon removal of all the caveats lodged in respect of the land;
- (3) Costs to be borne by each party.

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[2] It is to be noted that the learned High Court judge in making the above order had disallowed interest in respect of the payment of RM750,000 that was ordered to be paid by the defendant to the plaintiff being the balance of the purchase price of the land in question. Hence this appeal by the plaintiff.

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[3] The facts relevant to this appeal may briefly be stated as follows.

[4] The plaintiff is the registered owner of a piece of land known as QT(R) Lot No LOCH 235/62, Mukim Tanah Rata, Daerah Cameron Highlands. By an agreement dated 12 December 1991 executed between the plaintiff and the defendant, the defendant had agreed to purchase the said land. The salient terms of the said agreement relevant to the present appeal may be listed as follows:

- (a) Purchase price RM1,000,000.
- (b) Deposit RM250,000.
- (c) Balance of purchase price RM750,000 to be paid in the form of shares constituting 20% of the defendant's paid-up capital.
- (d) The defendant within two weeks from date of receipt of the document of title registered in the name of the plaintiff to submit all applications accompanied by building plans and specifications for development of the said land into hotel and cum condominium.
- (e) The defendant to obtain approval from the relevant authorities in respect of the construction before the expiry of two years from the date of the said agreement.
- (f) The defendant only to register the adjudicated transfer upon full payment of the purchase price to the plaintiff.

[5] Following allegation of breach of the above terms by the defendant, the plaintiff filed an action against the defendant seeking an order against the latter in the following terms:

- (a) Bahawa Perjanjian bertarikh 12hb Disember 1991 yang disempurnakan di antara plaintif dan defendan dianggap sebagai ditamatkan oleh kerana kemungkiran defendan.
- (b) Wang RM250,000 yang dibayar oleh defendan kepada plaintif sebagai deposit disimpan oleh plaintif sebagaimana gantirugi jumlah tertentu.
- (c) Satu perintah di bawah seksyen 417 Kanun Tanah Negara, 1965, mengarahkan Pendaftar Hakmilik Pahang untuk memperbetulkan daftarnya untuk mendaftar balik hakmilik hartanah tersebut kepada nama plaintif sebagai pemilik berdaftar yang sah.
- (d) Gantirugi umum bagi kemungkiran perjanjian.
- (e) Faedah pada kadar 8% setahun dari tarikh Saman difailkan sehingga tarikh penjelasan penuh.
- (f) Kos tuntutan.

A THE APPEAL

[6] Tuan Haji Sulaiman Abdullah, for the appellant/plaintiff at the outset of his submission before us, however, informed the court that plaintiff was pursuing the appeal only on the issue of interest on RM750,000 that was ordered by the court to be paid to the plaintiff. It is submitted that the award of interest on the judgment sum ought to have been made by the trial judge pursuant to O 42 r 12 of the Rules of the High Court 1980. In fortification of this proposition our attention is drawn to a decision in *Yap Yew Cheong & Anor v Dirga Niaga (Selangor) Sdn Bhd* [2005] 7 MLJ 660. In that case Abdul Malik Ishak J (as he then was) in stating the principle of law respecting the award of pre-judgment and post-judgment interest as laid down under the Rules of the High Court 1980, had this to say:

D ... it is now settled law that the plaintiffs could claim for pre-judgment and post-judgment interests. In regard to the post-judgment interest, from the date of judgment until the date of realisation the plaintiffs were entitled to 8% on the judgment debt computed and comprised by the principle sum plus judgment interest pursuant to O 42 r 12 Rules of the High Court 1980.

E [7] Besides the aforementioned subsidiary legislation there is also s 11 of the Civil Law Act 1956, which explicitly vests discretionary power on the court to award interests in respect of recovery of debt and damages by a party. Clearly, under that provision the court may, if it thinks fit, order that an interest be included in the sum for which judgment is given as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

G [8] In its response to the above issue, it is submitted for the defendant that the plaintiff is not entitled to interest because the plaintiff had lodged a private caveat on the said land, whilst the defendant on the other hand has always been ready, able and willing to pay but on condition that the plaintiff removes the caveat. Our view on this contention is that on the factual matrix of the evidence before the court it is apparent that the crux of the agreement between the parties was for them to embark on a joint-venture to develop the plaintiffs land into hotel cum condominium with terms and conditions as earlier mentioned. Clearly, from the evidence as found by the learned trial judge the defendant had not fulfilled conditions (c), (d) and (e) above. Notwithstanding that the defendant had proceeded to have the property in question transferred and registered in its name. Although it is the contention of the defendant that there was an oral agreement by the parties subsequently to vary the joint-venture agreement in particular a reduction in the sale and purchase price, the learned trial judge in her decision had found that the defendant had failed to prove that

such oral agreement took place. Hence, the order that ‘the defendant do pay the plaintiff the remainder of the purchase price that is RM750,000 ...’.

[9] Since the learned trial judge had rejected the defendant’s claim that there was an oral agreement to vary the terms and conditions of the JV agreement it must necessarily follow that the transfer of the land by the defendant to itself can only be done after all terms and conditions as stipulated in the agreement had been fulfilled. Clearly, from the evidence the defendant had failed to keep its side of the bargain. In the circumstances, we are of the view that the transfer of the property in question to the defendant was done in breach of the agreement and, therefore, unlawful. Perusal of the appeal record shows that the lodgment of the private caveat by the plaintiff was made after the transfer of the property by the defendant. In these circumstances, the plaintiff as the aggrieved original owner of the land is justified in lodging the said private caveat. In short, the plaintiff is not at fault. Further, we are mindful of the fact that interest is very much a discretionary matter. The discretion has to be exercised judiciously. In the circumstances of this case, we do not see any justification for the plaintiff to be deprived of the interest to which he is entitled under the law as aforesaid. By reason of these, we allowed the appeal with no order as to costs.

Appeal allowed with no order as to costs.

Reported by Kohila Nesan

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